

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

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FILED
JAMES BONINI
CLERK

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
v.)
)
CITY OF IRONTON, OHIO)
)
and)
)
THE STATE OF OHIO,)
)
Defendants.)
_____)

Civil Action No. **1109 CV 012**

WEBER, J.

COMPLAINT

The United States of America, by authority of the Attorney General of the United States, and on behalf of the Administrator of the United States Environmental Protection Agency, alleges the following:

NATURE OF ACTION

1. This is a civil action pursuant to Sections 309(b) and (d) and 505 of the Clean Water Act ("CWA"), 33 U.S.C. §§ 1319(b), (d), for injunctive relief and assessment of civil penalties against the City of Ironton, Ohio ("Ironton"), for the discharge of pollutants in violation of Section 301(a) of the CWA, 33 U.S.C. § 1311(a). Ironton has violated Section 301 of the CWA, 33 U.S.C. § 1311, by failing to meet the limitations and conditions contained in a National Pollutant Discharge Elimination System ("NPDES") permit issued by the Director of the Ohio Environmental Protection

Agency (“OEPA”) under Section 402(a) of the CWA, 33 U.S.C. § 1342. The State of Ohio (“Ohio”) has been joined as a party to this action pursuant to Section 309(a) of the CWA, 33 U.S.C. § 1319(a).

JURISDICTION AND VENUE

2. This Court has jurisdiction over the subject matter of this action pursuant to Sections 309(b), 504(a), and 505 of the CWA, 33 U.S.C. §§ 1319(b), 1364(a), 1365, and 28 U.S.C. §§ 1331, 1345, and 1355.

3. Venue is proper in the Southern District of Ohio pursuant to Section 309(b) of the CWA, 33 U.S.C. § 1319(b), and 28 U.S.C. §§ 1391(b) and (e), and 1395(a), because Ironton is located in this District and the causes of action alleged in this complaint arose in this District. Venue in this District also is proper under 28 U.S.C. § 1367(a).

4. The United States has provided notice of this action to Ohio as required by Section 309(b) of the CWA, 33 U.S.C. § 1319(b).

5. Authority to bring this civil action is vested in the Attorney General of the United States pursuant to Section 506 of the CWA, 33 U.S.C. § 1366, and 28 U.S.C. §§ 516 and 519.

THE PARTIES

6. Plaintiff, United States of America, is acting at the request and on behalf of the Administrator of the United States Environmental Protection Agency (“Administrator”).

7. Defendant, the City of Ironton, Ohio, is a chartered municipal corporation, organized and existing under the laws of the State of Ohio, and located in Lawrence County, Ohio. Ironton has authority and control over the sewer system within its boundaries, including, but not limited to, authority and control over the sanitary sewer system, the combined sewer system, and the related

wastewater treatment plant.

8. Ironton is a “municipality” and “person” within the meaning of Section 502(4) and (5) of the CWA, 33 U.S.C. § 1362(4) and (5).

9. Ohio is a party to this action pursuant to Section 309(e) of the CWA, 33 U.S.C. § 1319(e).

STATUTORY BACKGROUND

10. Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits the “discharge of pollutants” into navigable waters by any person except, *inter alia*, in compliance with a NPDES permit issued by the United States Environmental Protection Agency (“U.S. EPA”) or an authorized state pursuant to Section 402 of the CWA, 33 U.S.C. § 1342.

11. Section 402(a) of the CWA, 33 U.S.C. § 1342(a), provides that in issuing NPDES permits, the permit issuing authority, U.S. EPA or an authorized state, shall prescribe the conditions for such permits as it determines are necessary to carry out the provisions of the CWA.

12. Section 402(a) of the CWA, 33 U.S.C. § 1342(a), also provides that the Administrator may issue an NPDES permit that authorizes the discharge of any pollutant directly into navigable waters of the United States, but only in compliance with the applicable requirements of Section 301 of the CWA, 33 U.S.C. § 1311, and such other conditions as the Administrator determines are necessary to carry out the provisions of the CWA.

13. At all times relevant to this complaint, Ohio has been and continues to be authorized by the Administrator to implement the NPDES permit program for discharges into navigable waters within its jurisdiction pursuant to Section 402(b) of the CWA, 33 U.S.C. § 1342(b).

14. Section 309(b) of the CWA, 33 U.S.C. § 1319(b), authorizes the Administrator to

commence a civil action for appropriate relief, including a permanent or temporary injunction, when any person violates Section 301 of the CWA, 33 U.S.C. § 1311, or violates any permit condition or limitation in a permit issued under Section 402 of the CWA, 33 U.S.C. § 1342.

15. Section 309(d) of the CWA, 33 U.S.C. § 1319(d), provides that any person who violates Section 301 of the CWA, 33 U.S.C. § 1311, or violates any permit condition or limitation in a permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342, shall be subject to a civil penalty of up to \$25,000 per day for each violation occurring prior to January 31, 1997. Pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990 (28 U.S.C. § 2461 note; Pub. L. 101-410, enacted October 5, 1990; 104 Stat. 890), as amended by the Debt Collection Improvement Act of 1996 (31 U.S.C. § 3701 note; Pub. L. 104-134, enacted April 26, 1996; 110 Stat. 1321), the United States may seek civil penalties of up to \$27,500.00 per day for each violation that occurs on or after January 31, 1997, and on or before March 15, 2004; the United States may seek civil penalties of up to \$32,500 per day for each violation that occurs after March 15, 2004.

16. Pursuant to Sections 309 and 505 of the CWA, 33 U.S.C. §§ 1309 and 1365, this court may grant injunctive relief to address violations of Section 301 of the CWA, 33 U.S.C. § 1311, and the terms and conditions of an NPDES permit issued under Section 402 of the CWA, 33 U.S.C. § 1342.

GENERAL ALLEGATIONS

17. At all times relevant to this complaint, Ironton has discharged and continues to discharge “pollutants” within the meaning of Section 502(6) and (12) of the CWA, 33 U.S.C. § 1362(6) and (12), from the Ironton wastewater treatment plant and sewer system through “point sources” within the meaning of Section 502(14) of the CWA, 33 U.S.C. § 1362(14) into the Ohio

River.

18. The Ohio River into which Ironton discharged pollutants is a “navigable water” within the meaning of Section 502(7) of the CWA, 33 U.S.C. § 1362(7).

19. On May 31, 2002, the OEPA, under the authority of Section 402(b) of the CWA, 33 U.S.C. § 1342(b), issued Ohio EPA Permit No. 0PD00007*HD (the “2002 NPDES Permit”) to Ironton, with an effective date of July 1, 2002. On March 10, 2004, Ohio EPA amended the 2002 NPDES Permit (the “Amended 2002 NPDES Permit”). The Amended NPDES Permit became effective on June 1, 2004, and was scheduled to expire on July 31, 2006. On June 22, 2007, the OEPA issued Ohio EPA Permit No. 0PD00007*JD, which became effective on August 1, 2007 and is scheduled to expire on July 31, 2011 (the “2007 NPDES Permit”). Pursuant to Ohio Rev. Code Section 119.06 and Ohio Admin. Code 3745-33-04(D), the terms and conditions of the Amended 2002 NPDES Permit were in effect until the effective date of the 2007 NPDES permit.

20. The 2002 NPDES Permit and the Amended 2002 NPDES Permit authorized, and the 2007 NPDES Permit authorizes Ironton to discharge pollutants from a single wastewater treatment plant outfall, a single wastewater treatment plant bypass outfall, and eight combined sewer overflow structures (“CSO structures”) at locations specified in Part II.E of the 2002 NPDES Permit, the Amended 2002 NPDES Permit, and the 2007 NPDES Permit, subject to certain limitations and conditions.

FIRST CLAIM FOR RELIEF
IRONTON VIOLATED THE GENERAL EFFLUENT LIMITATIONS OF ITS PERMITS
BY DISCHARGING INTO THE OHIO RIVER EFFLUENT IN AMOUNTS THAT
IMPAIRED THE DESIGNATED DOWNSTREAM WATER USES

21. Paragraphs 1 through 20 are realleged and incorporated herein by reference.

22. The 2002 NPDES Permit and the Amended 2002 NPDES Permit authorized and the 2007 NPDES Permit authorizes Ironton to discharge pollutants from, *inter alia*, its eight CSO structures, subject to certain limitations and conditions.

23. These limitations and conditions included, but were not limited to, the "General Effluent Limitations" set forth at Part III.2.F. of the 2002 NPDES Permit, the Amended 2002 NPDES Permit, and the 2007 NPDES Permit, which provides that:

The Effluent shall, at all times, be free of substances:

* * * *

F. In amounts that will impair designated instream or downstream water uses.

24. The State of Ohio has established the following designated uses for the Ohio River: warmwater habitat, public water supply, agricultural water supply, industrial water supply and bathing waters (Ohio Administrative Code (OAC) 3745-1-32).

25. The term "bathing waters" is defined at OAC 3745-1-07(B)(4)(a) as, "waters that, during the recreation season, are suitable for swimming where a lifeguard and/or bathhouse facilities are present, and include any additional such areas where the water quality is approved by the director" of OEPA.

26. Table 7-13 of OAC 3745-1-07 establishes numerical criteria for bathing waters. The following criteria apply for bathing waters between May 1 and October 15:

Fecal coliform – geometric mean fecal coliform content (either MPN or MF), based on not less than five samples within a thirty-day period, shall not exceed 200 per 100 ml and fecal coliform content (either MPN or MF) shall not exceed 400 per 100 ml in more than ten per cent of the samples taken during any thirty-day period.

E. coli – geometric mean *E. coli* content (either MPN or MF), based on not less than five samples within a thirty-day period, shall not exceed 126 per 100 ml and *E. coli* content (either MPN or MF) shall not exceed 235 per 100 ml in more than ten per cent of the samples taken during any thirty-day period.

27. Ironton has released from its CSO structures discharges that contain hundreds of thousands, and, on occasion even millions, of counts of fecal coliform per 100 milliliters.

28. The Ironton combined sewer overflow discharges impair the use of the Ohio River for bathing purposes by adding fecal coliform bacteria to the Ohio River.

29. Ironton's CSO discharges violated and continue to violate the terms and conditions of the 2002 NPDES Permit, the Amended 2002 NPDES Permit, and the 2007 NPDES Permit, including the General Effluent Limitations in Part III.2.F. of the 2002 NPDES Permit, the Amended 2002 NPDES Permit, and the 2007 NPDES Permit, which in turn violated and continues to violate Section 301 of the CWA, 33 U.S.C. § 1311.

30. Ironton has violated and will continue to violate Section 301 of the CWA, 33 U.S.C. § 1311, unless enjoined by the Court.

31. Pursuant to Sections 309 (b) and (d) of the CWA, 33 U.S.C. § 1319(b) and (d), Ironton is subject to injunctive relief and liable for civil penalties of up to \$27,500.00 per day for each violation that occurred on or after January 31, 1997, and on or before March 15, 2004; and Ironton is liable for civil penalties of up to \$32,500 per day for each violation occurring after March 15, 2004.

**SECOND CLAIM FOR RELIEF
IRONTON VIOLATED ITS NPDES PERMITS BY FAILING TO
IMPLEMENT THE NINE MINIMUM CONTROLS**

32. Paragraphs 1 through 20 are realleged and incorporated herein by reference.

33. Section II.S. of the 2002 NPDES Permit and the Amended 2002 NPDES Permit required and Section II.F. of the 2007 NPDES Permit requires, in relevant part, that:

[t]he entire wastewater treatment system shall be operated and maintained so that the total loading of pollutants discharged during wet weather is

minimized. To accomplish this, the permittee shall utilize the following technologies:

- 1) provide proper operation and maintenance for the collection system and the combined sewer overflow points;
- 2) provide the maximum use of the collection system for storage of wet weather flow prior to allowing overflows;
- 3) review and modify the pretreatment program to minimize the impact of nondomestic discharges from combined sewer overflows; or if there is no pretreatment program review and modify local programs to minimize the impact of nondomestic discharges from combined sewer overflows;
- 4) maximize the capabilities of the POTW to treat wet weather flows, and maximize the wet weather flow to the wastewater treatment plant within the limits of the plant's capabilities;
- 5) prohibit dry weather overflows;
- 6) control solid and floatable materials in the combined sewer overflow discharge;
- 7) conduct required inspection, monitoring and reporting of CSOs;
- 8) implement pollution programs that focus on reducing the level of contaminants in CSOs; and
- 9) implements a public notification program for areas affected by CSOs, especially beaches and recreation areas.

34. On various dates from September 2000 through the present, Ironton failed to maintain and operate its combined sewer system in a manner as necessary to minimize impacts to the Ohio River of discharges from the CSO structures as follows:

- A. Failing to regularly maintain its sewer system;
- B. Failing to demonstrate that it has maximized the use of its collection system for storage as an alternative to discharging untreated effluent;
- C. Failing to control solids and floatables in the combined sewer overflows; and,
- D. Failing to effectively characterize CSO impacts and the effectiveness of CSO controls.

35. Ironton's failure to maintain and operate its combined sewer system in a manner as necessary to minimize impacts to the Ohio River of discharges from the CSO structures was and is in violation of Section II.S. of the 2002 NPDES Permit and Amended 2002 NPDES Permit and

Section II.F. of the 2007 NPDES Permit, which is, in turn, a violation of Section 301 of the CWA, 33 U.S.C. § 1311.

36. Ironton has violated and will continue to violate Section 301 of the CWA, 33 U.S.C. § 1311, unless enjoined by the Court.

37. Pursuant to Sections 309(b) and (d) of the CWA, 33 U.S.C. § 1319(b) and (d), Ironton is subject to injunctive relief and liable for civil penalties of up to \$27,500.00 per day for each violation that occurred on or after January 31, 1997, and on or before March 15, 2004; and Ironton is liable for civil penalties of up to \$32,500 per day for each violation occurring after March 15, 2004.

**THIRD CLAIM FOR RELIEF
IRONTON HAS FAILED TO FILE A TIMELY LONG-TERM CONTROL PLAN**

38. Paragraphs 1 through 20 are hereby incorporated by reference and realleged as if set forth fully herein.

39. Part I, C.A. of the Amended 2002 NPDES Permit provides in pertinent part as follows:

Within 18 months of the effective date of this permit modification, the permittee shall develop and submit for approval to the Southeast District Office two copies of a Combined Sewer System Long-Term Control Plan. The goal of the plan is that discharges from combined sewer overflows shall not cause or significantly contribute to violations of water quality standards or impairment of designated uses.

40. The effective date of the Amended 2002 NPDES Permit is June 1, 2004, and 18 months following the effective date is December 1, 2005.

41. Part I.C.A. of the 2007 NPDES Permit provides that Ironton shall submit and develop a Combined Sewer System Long-Term Control Plan by December 1, 2006.

42. Ironton has failed to submit two copies of a Combined Sewer System Long-Term Control Plan to the Southeast District Office by either December 1, 2005 or December 1, 2006.

44. Ironton's failure to submit on time the Long-Term Control Plan by those dates is a violation of Part I, C.A. of the Amended 2002 NPDES Permit and of the 2007 NPDES Permit and, in turn, a violation of Section 301 of the CWA, 33 U.S.C. § 1311.

45. Pursuant to Sections 309(b) and (d) of the CWA, 33 U.S.C. § 1319(b) and (d), Ironton is subject to injunctive relief and liable for civil penalties of up to \$27,500.00 per day for each violation that occurred on or after January 31, 1997, and on or before March 15, 2004; and Ironton is liable for civil penalties of up to \$32,500 per day for each violation occurring after March 15, 2004.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, the United States of America, prays that the Court:

1. Permanently enjoin the City of Ironton from any further violations of the Clean Water Act and Ironton's Amended NPDES Permit;

2. Order the City of Ironton to expeditiously complete all actions necessary to ensure that it complies with its NPDES Permit and all other applicable requirements of the Clean Water Act;

3. Order the City of Ironton to pay the United States its costs of this action;

4. Order the City of Ironton to pay a civil penalty of up to \$27,500.00 per day for each violation of the Clean Water Act occurring on or after January 31, 1997 and on or before March 15, 2004; and \$32,500.00 per day for each violation of the Clean Water Act occurring after March 15, 2004;

5. Grant the plaintiffs such further relief as the Court deems just and proper.

Respectfully submitted,
FOR THE UNITED STATES OF AMERICA:

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